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SEP 30 2008

OFFICE OF PETITIONS

In re Patent No. 7,320,245 : DECISION ON REQUEST
Jaralla et al. : FOR RECONSIDERATION
Issue Date: January 22, 2008 : and
Application No. 10/533,490 : NOTICE OF INTENT TO ISSUE
Filed: November 30, 2005 : CERTIFICATE OF CORRECTION
Atty Docket No. 206,973 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed January 14, 2008. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected to two hundred sixty-two (262) days.

The request for reconsideration of patent term adjustment is **DISMISSED**.

Patentee is given two (2) months from the mail date of this decision to respond. Extensions of time under § 1.136(a) are not permitted.

However, for the reasons stated herein, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one hundred forty-four (144)** days.

On January 22, 2008, the application matured into U.S. Patent No. 7,320,245, with a revised patent term adjustment of 145 days. Prior to issuance, on January 14, 2008, patentees timely filed the instant request for reconsideration of patent term adjustment. Patentee states that the correct patent term adjustment is 262 days. Patentee requests the correction on the basis that the Office failed to issue a patent within "four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied."

Patentee states that the issue fee was paid and all outstanding requirements were satisfied on January 3, 2007. Patentee further states that as the issue date for the patent shown on the Issue Notification is January 22, 2008, the period of delay exceeding the 4-month time limit for patent issuance is 262 days.

Patentee is correct that a period of adjustment was due for Office delay in issuing the patent. In fact, at issuance of the patent, a period of adjustment of 265 days was entered for the Office taking in excess of four months to issue the patent after payment of the issue fee and satisfaction of all outstanding requirements. However, patentee does not recognize that this period of adjustment was properly reduced for applicant delay. Specifically, 37 CFR 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or

(ii) Four months; and

In this instance, drawings were filed on January 3, 2007, after the mailing of the notice of allowance on October 2, 2006. This constituted a failure to engage for which a period of reduction of 120 days was properly entered.

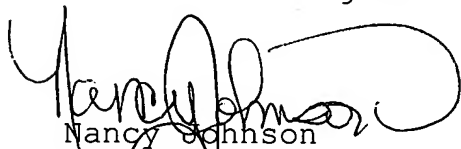
However, correction of the patent term adjustment is required as the period of adjustment for Office delay was 264 days, not 265 days. The issue fee was paid and all outstanding requirements were satisfied as of January 3, 2007. Pursuant to 37 CFR 1.703(a)(6), the period of adjustment is 264 days (not 265 days), counting the number of days in the period beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied, May 4, 2007, and ending on the date a patent was issued, January 22, 2008.

In view thereof, it is concluded that the revised patent term adjustment indicated in the patent should be one hundred forty-four (144) days (264 - 120).

The Office acknowledges submission of \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one hundred forty-four **(144)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,320,245 B2

DATED : January 22, 2008

DRAFT

INVENTOR(S) : Jaralla et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 145 days

Delete the phrase "by 145 days" and insert – by 144 days--